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Eleventh Amendment.[2] The remedy was peculiarly applicable to railroad rate regulation, since the complaining company could usually show the likelihood of irreparable damage or multiplicity of actions under the statute or rate alleged to be invalid. The legislatures accordingly provided regular methods of access to the state courts, for the purpose of reviewing the acts of the rate-making body;[3] but it was held that the state could not limit the railroads to relief in the state courts, either negatively by furnishing an adequate remedy at law,[1] or by positive prohibition of recourse to the federal courts.[4] Such being the situation, the Supreme Court has recently announced that a carrier complaining of a rate fixed by a state commission must first exhaust the remedies in the state courts provided by the statute before it applies to the federal court for an injunction. *Prentis* v. *Atlantic Coast Line Company*, U. S. Sup. Ct., Nov. 30, 1908. No precedents are cited for this sudden modification of an established procedure, nor have any been found; nevertheless similar sets of facts have occurred before.[5] It is true that here the state provided an appeal from the commission to a state court which was given power, upon reversing the order appealed from, to substitute an order of its own;[6] whereas in previous cases the complainant's remedy, whether by independent action in a court of first instance or by appeal, was considered a means of judicial, not legislative, review.[7] Hence there is much force in the majority's argument that the federal judge should wait, before restraining the enforcement of legislation, for the state completely to legislate. This reasoning narrows the decision to the particular facts, which are not likely to occur in other states.[8]

A broader ground, suggested by the majority opinion, is that of comity between the two systems of government. The plaintiff who applies for an injunction against invalid state legislation is not compelled,[1] as is generally the prisoner who applies to a federal judge for a writ of *habeas corpus* alleging detention by the state in violation of the Constitution,[8] to reach the Supreme Court only by writ of error from the appellate state tribunal. Perhaps the present decision establishes a course midway between the former liberal attitude toward injunction bills and the stricter rule in *habeas corpus* proceedings. The policy is to adopt those methods which are most apt to produce harmony between the federal judiciary and the states.[9]

THE APPOINTMENT OF A RECEIVER FOR A CORPORATION DE FACTO. — A recent case suggests the question whether it is proper for a court to appoint a receiver in the case of a *de facto* corporation. *Matter of New York, W. & B. Ry. Co.*, 193 N. Y. 73. The question was not squarely raised in the case, because the defect in incorporation was later cured *ab initio* under statutory provision. There is little authority directly on the point, but it

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[2] See 21 HARV. L. REV. 527.
[3] See Beale and Wyman, Railroad Rate Regulation, c. XLI.
[4] *Ex parte* Young, 209 U. S. 123.
[5] Smyth *v.* Ames, *supra*. *Cf.* Reagan *v.* Farmer's Loan and Trust Co., 154 U. S. 362, where the provision for review was construed to include access to the federal court.
[6] Va. Const., Art. XII, § 156 (g).
[7] Steenerson *v.* Great Northern Ry. Co., 69 Minn. 353. *Cf.* Western Union Tel. Co. *v.* Myatt, 98 Fed. 335.
[8] See 21 HARV. L. REV. 204.
[9] See Taylor *v.* Carryl, 20 How. (U. S.) 583.

has been held that a receiver may be appointed for such a corporation,[1] and a recent writer assumes that the winding up of a *de facto* corporation is similar to that of a *de jure* corporation.[2] And it seems settled that, after the court has appointed a receiver for a corporation, third parties are estopped from attacking the incorporation against him to the same extent as against the associates.[3] Analogously, the state may recognize the incorporation in spite of a defect, so that the associates cannot avail themselves of the defect to resist taxation as a corporation.[4] And a receiver may be appointed to settle the affairs of a defunct corporation,[5] or of a corporation whose charter has been forfeited.[6] On the other hand, the appointment of a receiver for a corporation — which is generally governed by statute [7] — usually rests in the sound discretion of the court,[8] and courts are inclined to construe strictly statutes giving them such power.[9]

It has been said that courts of equity have inherent power to appoint a receiver for a corporation even in the absence of statute.[10] At all events, they are generally expressly given such power to-day by statutes.[11] Then, since a court of equity can appoint a receiver for a partnership [12] or corporation, as well as for a natural person,[13] it seems to follow that it can appoint a receiver for a corporation *de facto*. But the question is whether the receiver should be appointed on the corporate basis and under statutes applying only to corporations. This is important, because, in the absence of express statutory provision, a court will not appoint a receiver for a corporation except on grounds which would justify the appointment in the case of a natural person.[14] However, if it has once been decided that the associates are liable merely as stockholders,[15] and not as partners, it seems to follow as a logical matter of procedure that a receiver may be appointed to wind up the affairs of a corporation *de facto* on the corporate basis. But, granting this much, it is still to be observed that a corporation is not necessarily dissolved by the appointment of a receiver,[16] and that a receiver may even be appointed to carry on the business for a limited time under the direction of the court.[17] And it is submitted that different considerations arise when the receiver is appointed not merely to wind up the affairs of a corporation *de facto* but to carry on its business. For a court to conduct the business on the corporate basis, when a condition imposed by the legislature as precedent to incorporation has not been complied with, would be directly, and not merely collaterally, in the teeth of the statute. It seems that the farthest a court should go in such a case would be to order the receiver to cure the defect in incorporation, if a statute made that possible, and conduct the business on the corporate basis only after that.

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1 Dobson *v.* Simonton, 78 N. C. 63.
2 Machen, Corporations, 251.
3 Estate of Davis *v.* Watkins, 56 Neb. 288.
4 Comm. *v.* Licking Valley Bldg. Ass'n, 118 Ky. 791.
5 State *ex rel.* Brittin *v.* New Orleans, 106 La. 469.
6 American Surety Co. *v.* Great White Spirit Co., 58 N. J. Eq. 526.
7 Vila *v.* Grand Isl. Electric, etc., Co., 68 Neb. 222.
8 Chicago, etc., Co. *v.* U. S. Petroleum Co., 57 Pa. 83.
9 Matter of Pyrolusite Manganese Co., 29 Hun (N. Y.) 429.
10 See Davis *v.* Gray, 16 Wall. (U. S.) 220, per Swayne, J.
11 U. S. Trust Co. *v.* N. Y., etc., Ry. Co., 101 N. Y. 474.
12 Gowan *v.* Jeffries, 2 Ashm. (Pa.) 296.
13 Corcoran *v.* Doll, 35 Cal. 476.
14 Barber *v.* International Co. of Mexico, 73 Conn. 587.
15 See 21 HARV. L. REV. 305.
16 Allen *v.* Olympia Light & Power Co., 13 Wash. 307.
17 O. & M. Ry. Co. *v.* Russell, 115 Ill. 52.